

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Docket No. SA-17-CR-608(1)-XR
)
JAMES AMOS HEADLEY,) San Antonio, Texas
) August 24, 2017
Defendant.) 10:27 a.m. to 11:24 a.m.
)

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE ELIZABETH S. CHESTNEY
UNITED STATES MAGISTRATE JUDGE

FOR THE GOVERNMENT:

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1 (Open court at 10:27 a.m.)

2 THE COURT: You may be seated.

3 THE COURTROOM DEPUTY: The Court calls the case of the
4 United States of America versus James Amos Headley. This is
5 case number SA-17-CR-608.

6 MS. RICHARDSON: Bettina Richardson on behalf of the
7 United States. Good morning, Your Honor.

8 THE COURT: Good morning.

9 MS. ROTH: Molly Roth for Mr. Headley. Good morning,
10 Your Honor.

11 THE COURT: Good morning.

12 We are here on a continuation of the detention hearing
13 regarding the defendant, Mr. Headley. I have received from the
14 psychologist a copy of the report, and I've reviewed it. And
15 pretrial's been provided with a copy of it.

16 Ms. Richardson, have you had an opportunity to review it?

17 MS. RICHARDSON: I have, Your Honor.

18 THE COURT: And Ms. Roth?

19 MS. ROTH: Yes, Your Honor.

20 THE COURT: Okay. So that information, in addition to
21 the testimony that was taken during the detention hearing, I've
22 considered all of that. Is there more evidence that's going to
23 be presented today?

24 MS. RICHARDSON: Yes, Your Honor.

25 THE COURT: Okay. You can call your first witness?

1 MS. RICHARDSON: The government calls Special Agent
2 Ronda Clark.

3 THE COURTROOM DEPUTY: Please raise your right hand.
4 (The oath was administered)

5 THE COURTROOM DEPUTY: Thank you.

6 MS. RICHARDSON: Your Honor, since I was not -- I did
7 not participate in the original beginning of the detention
8 hearing, I have ordered a copy of the transcript and am aware
9 of the information that was presented. Special Agent Clark
10 testified as to the incident that occurred prior to and on the
11 day of the -- with regards to the day of the arrest. And if
12 it's okay with the Court, I won't go back through all that.

13 THE COURT: That's okay. I was here for that
14 testimony, and I've also reviewed the transcript again for the
15 continuation of the hearing today.

16 RONDA CLARK, GOVERNMENT'S WITNESS, SWORN

17 DIRECT EXAMINATION

18 BY MS. RICHARDSON:

19 Q. Special Agent Clark, in addition to the information that
20 you provided for the Judge at the prior hearing, I believe that
21 was on July 19th, during that hearing was there some discussion
22 about a call for service to the residence of the defendant and
23 his wife, specifically on Oakside in Universal City?

24 A. There was.

25 Q. And that was with regards to an incident or a call for

1 service on September the 9th, 2008; is that correct?

2 A. It was the walk-in.

3 Q. On September 9th, 2008?

4 A. Yes.

5 MS. RICHARDSON: And, Your Honor, may I approach the
6 witness?

7 THE COURT: Yes.

8 You said the "walk-in"?

9 THE WITNESS: A walk-in complaint.

10 THE COURT: Oh, okay.

11 BY MS. RICHARDSON:

12 Q. And what is a walk-in complaint?

13 A. It's when somebody goes to the police station.

14 Q. And to file a complaint about something that has happened
15 in their -- in their life; a criminal complaint?

16 A. Correct.

17 Q. And so as a result of that, is that person interviewed and
18 documentation made?

19 A. Yes.

20 Q. And did -- were you asked to secure a copy of the
21 documentation related to that walk-in complaint?

22 A. Yes.

23 Q. And did you do that?

24 A. Yes.

25 MS. RICHARDSON: Your Honor, government has provided

1 Government's Exhibit 1 to defense counsel prior to the hearing.
2 And at this time I will offer into evidence Government's
3 Exhibit 1.

4 BY MS. RICHARDSON:

5 Q. Did you have an opportunity to look over that walk-in
6 complaint?

7 A. I did.

8 Q. And would it be helpful if you have one to look at while
9 you testify?

10 A. Yes.

11 Q. And it is a multipage document; is that correct?

12 A. Correct.

13 Q. And specifically, let me turn your attention to the address
14 that is documented. Is that the same address where the
15 defendant was arrested in July of 2017?

16 A. Yes.

17 Q. In Universal City?

18 A. Yes.

19 Q. And when -- based upon your investigation and the
20 information that you've received, how did the FBI become aware
21 of the existence of this walk-in complaint?

22 A. The FBI was working with Universal City Police Department,
23 and they ran the address and were aware of a report that was
24 made.

25 Q. On the day of the arrest?

1 A. Correct.

2 Q. So the FBI reached out to local law enforcement with
3 regards to their intention to make an arrest in their
4 jurisdiction?

5 A. Correct.

6 Q. And Universal City police are the ones who actually
7 informed FBI: Hey, when you get to this house, you need to
8 know there's been an offense report filed about violence in
9 that house?

10 A. Correct.

11 Q. Okay. And that's standard protocol for the safety of
12 everybody that's involved; is that right?

13 A. Yes.

14 Q. Okay. If you'll look at the last page of the offense
15 report, specifically with regards to the information where it
16 says, "P. Headley is going to leave her husband due to the
17 constant verbal abuse. She's rented an apartment and will move
18 out on October the 1st, 2008. I advised her, if she's afraid
19 of her husband, a protective order could be filed and she could
20 be taken to a shelter."

21 Did you do any research, utilizing investigative methods,
22 to determine whether or not Ms. Headley had, in fact, done any
23 research or made any movement in the direction of moving out
24 and renting an apartment in October -- or September of 2008?

25 A. I did.

1 Q. Okay. And were you able to identify an apartment that she
2 was planning to move to on October the 1st?

3 A. There is an apartment that comes up dated October 2008
4 under her name.

5 Q. And what is that -- name of that apartment?

6 A. I believe it's Park Ridge Apartments.

7 Q. In Universal City? Or in San Antonio?

8 A. San Antonio.

9 Q. On Randolph Road?

10 A. Yes.

11 Q. Okay. And did she indicate whether or not she was going
12 to -- based on this offense report, whether or not she was
13 going to stay in the family home or leave the family home prior
14 to October 1st?

15 A. In the report she indicates that she will stay with friends
16 until October.

17 Q. Okay. And you heard Ms. Headley testify at the prior
18 hearing?

19 A. Yes.

20 Q. And she actually denied having a conversation with law
21 enforcement with regards to abuse from her husband?

22 A. Yes.

23 MS. ROTH: Your Honor, this record speaks for itself.
24 We have a transcript of it. I object to any testimony about
25 how the officer might view that transcript. We can all read it

1 for ourselves. And it is the best evidence on the point, not
2 the officer's speculation about anything.

3 THE COURT: I've also read it, and I know what she
4 testified to.

5 BY MS. RICHARDSON:

6 Q. Did you, as a result of reviewing this offense report,
7 specifically the paragraph where it says, P. Headley made a
8 similar report on April the 9th, 2000, and it lists an offense
9 report number?

10 A. Yes.

11 Q. As a result of that, did you go in pursuit of that offense
12 report?

13 A. I did.

14 Q. And that offense report is dated April the 9th, 2000; is
15 that correct?

16 A. That's correct.

17 MS. RICHARDSON: May I approach, Your Honor?

18 BY MS. RICHARDSON:

19 Q. I'm going to show you what's been marked as Government's
20 Exhibit Number 2 and ask you if that's the offense report?

21 A. That is.

22 MS. RICHARDSON: Your Honor, at this time the
23 government has tendered a copy to defense counsel and would
24 offer this into evidence.

25 THE COURT: Any objection, Ms. Roth?

1 MS. ROTH: This is the first time I've seen this. If
2 I could just read it for one moment, Your Honor.

3 THE COURT: Sure.

4 (Pause)

5 MS. ROTH: I don't have an objection to either one of
6 these for purposes of this hearing, Your Honor. It doesn't
7 mean that I agree with everything that's in them. This is the
8 first time I've seen the second report. The first one I had
9 seen before but got a copy of this morning before the hearing.

10 THE COURT: Okay. Thank you, Ms. Roth. This will be
11 admitted, as will Exhibit 1.

12 (Government's Exhibit Nos. 1 and 2 admitted)

13 BY MS. RICHARDSON:

14 Q. Okay. Looking at the second page, this again was a walk-in
15 complaint?

16 A. Correct.

17 Q. Where Ms. Headley drove herself to Universal City Police
18 Department to file an official report about something going on
19 in the family home --

20 A. Correct.

21 Q. -- involving the defendant.

22 And towards the end it says, "Ms. Headley stated that she
23 feels her husband is capable of causing her physical harm and
24 does fear for her safety if her husband finds out she reported
25 this to the police"; is that correct?

1 A. Correct.

2 Q. And the next paragraph says that she plans to come in on
3 April the 10th at 4:30 and talk to an investigator?

4 A. Correct.

5 Q. Do you have any information as to whether or not she
6 followed through on that plan?

7 A. I do not.

8 MS. RICHARDSON: Okay. I pass the witness.

9 THE COURT: Thank you, Ms. Richardson.

10 Ms. Roth.

11 CROSS-EXAMINATION

12 BY MS. ROTH:

13 Q. Agent Clark, your investigation doesn't reveal that
14 Mrs. Headley ever moved out of the house, correct?

15 A. Correct.

16 Q. The police reports that are given both describe walk-ins
17 and not phonecalls to the Universal City Police Department,
18 correct?

19 A. That is correct.

20 Q. They also confirm that Mrs. Headley was working at that
21 time at Dillard's?

22 A. Yes.

23 Q. They also note that Mrs. Headley said that she has never
24 been threatened by firearms and that there was no physical
25 violence alleged by her, correct?

1 A. In one of the reports she felt that it implied a threat, in
2 the 2000 report.

3 Q. That was what Ms. Richardson just read to you, correct?

4 A. The report says she felt having the gun at his side implied
5 a threat to her.

6 Q. Which is what Ms. Richardson just read to you, correct?

7 You just testified about that on direct?

8 A. I don't remember her reading that specific statement but --

9 Q. Okay. Other than that statement, which is an implied
10 threat, is what you're saying -- let's go back to the question.
11 Other than that, there's no indication at all or allegation at
12 all that Mrs. Headley was ever threatened by a firearm,
13 correct?

14 A. Can you describe what you're talking about with
15 threatening? Because when somebody walks into a room, picks up
16 a firearm and comes back out, that can be construed as a
17 threat.

18 THE COURT: Ms. Roth, let me see if I can ask the
19 question.

20 Other than the things that have been reported in these two
21 police reports, do you have any other information of
22 Mr. Headley making a threat with a firearm?

23 THE WITNESS: No.

24 THE COURT: Okay.

25

1 BY MS. ROTH:

2 Q. And it's clear from these two police reports that
3 Mrs. Headley is telling the police, according to these police
4 reports, that she has not ever been physically threatened or
5 abused by Mr. Headley, correct?

6 THE COURT: Ms. Roth, you know what? I can read the
7 police reports. And I've read them and I see what they say and
8 what she said and what the police officer said in them. I
9 don't think Ms. Clark can offer me anything else beyond that
10 interpretation, that I can't do myself. So you want to go on
11 and ask anything else.

12 BY MS. ROTH:

13 Q. Okay. You don't have any other -- any other information
14 about this other than what's in these two police reports,
15 correct?

16 A. Not at this time.

17 MS. ROTH: I don't have any further questions, Your
18 Honor.

19 THE COURT: Thank you, Ms. Roth.

20 MS. RICHARDSON: Nothing further from this witness.

21 THE COURT: Okay. You can step down.

22 MS. RICHARDSON: The government calls Special Agent
23 Lee McCoy -- McLoy.

24 THE COURTROOM DEPUTY: Raise your right hand.

25 (The oath was administered)

1 THE COURT: Good morning.

2 THE WITNESS: Good morning.

3 LEE MCLOY, GOVERNMENT'S WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MS. RICHARDSON:

6 Q. Special Agent McLoy, will you introduce yourself and spell
7 your last name for the benefit of the transcript?

8 A. I'm Special Agent Lee McLoy. And my last name is spelled
9 M-C-L-O-Y.

10 Q. And you are a special agent with the Federal Bureau of
11 Investigations?

12 A. Yes, ma'am, I am.

13 Q. And how long have you been?

14 A. For approximately 15 years.

15 Q. And in that capacity do you investigate threats on public
16 officials?

17 A. Yes.

18 Q. And did you have an opportunity to participate in the
19 investigation that involves James Amos Headley?

20 A. I was the original agent that took the call from D.C.
21 police.

22 Q. Okay. And as a result of that, were you also present on
23 July 13th, 2017, at the residence in Universal City when the
24 defendant was arrested?

25 A. Yes.

1 Q. And while you -- as a part of that, did you also transport
2 the defendant from Universal City from that location?

3 A. I was not in the vehicle with him. I followed behind. But
4 I was familiar with the agents that did transport him.

5 Q. And following that transport, were you provided some
6 information that he shared voluntarily during the transport?

7 A. Yes, I was.

8 Q. And what was that?

9 A. I was informed by Task Force Officer Dave Lozano, who is
10 with San Antonio Police Department, that Mr. Headley had made
11 some comments about prior violence, events in his --

12 MS. ROTH: Your Honor, I'm going to object at this
13 point because Mr. Lozano could certainly come in and testify if
14 the government wished to call him. Hearsay is admissible at
15 these hearings, but this is too critical and too attenuated.
16 This witness testified that he didn't hear these statements;
17 that another officer reported them to him. And so I'm going to
18 object as this hearsay being too attenuated.

19 THE COURT: Okay. That objection is overruled. We're
20 in the context of a detention hearing, and I can have hearsay
21 testimony. And I will give it the -- I will factor in its
22 attenuation into how much weight I give it.

23 BY MS. RICHARDSON:

24 Q. Special Agent McLoy, what did Dave Lozano share with you
25 that the defendant said during transport that he felt was of

1 value to share with the lead agent at that time?

2 A. So just for clarity, Officer Lozano both spoke with me and
3 provided me a copy of his report. So I've read the report and
4 hearing him directly. Officer Lozano shared that Mr. Headley,
5 in the back seat of the vehicle, had described an event when he
6 was in the military and transporting a prisoner, and that the
7 prisoner had a history of violence. And at one point
8 Mr. Headley pistol-whipped the prisoner severely and -- but
9 that the weapon was unloaded.

10 Q. And Task Force Officer Lozano, did he give you an
11 indication of how the defendant was during the relay of that
12 information, what his demeanor was?

13 A. Officer Lozano I think shared that it was almost
14 braggadocious to -- that the way that the story was relayed
15 from Mr. Headley.

16 Q. Okay. And during -- were you present and a part, the lead
17 agent, of the interview of the defendant once he was in a place
18 to be interviewed?

19 A. Yes.

20 Q. And was that interview after having provided him with his
21 constitutional and statutory warnings?

22 A. Yes, that was.

23 Q. And he voluntarily participated in the interview?

24 A. Yes, he did.

25 Q. Were there things that he said during that interview that I

1 believe you later described to me as chilling?

2 A. Yes.

3 Q. And what were those?

4 A. Well, there were several comments that were made, that
5 hearing them a first time was chilling. And then I went back
6 and reviewed the video and audio that was made of the -- of the
7 interview for my report. And some of the comments that came to
8 mind, that I also documented in the 302, was Mr. Headley
9 describing the event that took place in northern Virginia with
10 the shooting of the congressman on the baseball field.

11 What was chilling about his retelling of the story was that
12 -- not so much that he was concerned for the well-being of the
13 congressman, but that he felt the subject of that event that
14 was shooting at the congressman didn't know what he was doing
15 with the rifle. And had the subject known what he was doing
16 with the rifle, that the devastation could have been much more
17 severe. That was one event. There were several other events
18 as well.

19 Q. What other event comes to mind -- statement that he made
20 during that interview?

21 A. There was a statement that he made about -- I think Ted
22 Cruz was doing a town hall event. And in that event Senator
23 Cruz was approached, and there was an exchange between Senator
24 Cruz and a citizen taking part in the town hall event, and --

25 Q. And did Mr. Headley give you any indication that if he had

1 been present at that town hall --

2 MS. ROTH: Judge, the witness needs to testify, Your
3 Honor. And I object to counsel -- she's done this, and that's
4 fine. It's expediting the hearing. But this is too much.
5 This is on a point that if the witness can remember, he can
6 remember. If he can't, he can't. But no testimony from the
7 counsel.

8 THE WITNESS: I recall the statement.

9 MS. RICHARDSON: Okay.

10 THE WITNESS: So the statement was that Mr. Headley
11 took offense to the way the senator was responding to the
12 individual; and that if Mr. Headley had been that individual,
13 he would have beat the senator and --

14 THE COURT: "Would have" what now?

15 THE WITNESS: Beat him with --

16 THE COURT: Oh, beat him.

17 THE WITNESS: Beaten him. And that the next time that
18 they had an exchange, that he would know not to talk to him
19 that way. And that's a paraphrase, but that was what he said.

20 BY MS. RICHARDSON:

21 Q. Did the defendant admit to you during the interview that he
22 was the one who placed the phonecalls to Senator Cruz' office?

23 A. Yes. Mr. Headley took responsibility for the call.

24 Q. Did he try to mitigate it or give any impression that,
25 well, he didn't really mean it?

1 A. No, he did not.

2 Q. Did he offer explanations about actually why he did mean
3 it?

4 A. He did.

5 Q. Did he give you explanations about what had actually made
6 him angry?

7 A. Yes, he did.

8 Q. Was there a point during the conversation -- do you recall
9 whether or not he indicated to you that he recognizes that an
10 individual of his size can actually really hurt someone if he
11 wants to?

12 A. He said that, and I documented it in my report.

13 Q. Did he tell you that there were instances in his life in
14 the past when he got really hot and really worked up?

15 A. Yes.

16 Q. And did he indicate whether or not he was really hot and
17 really worked up with Senator Cruz?

18 A. He said specifically that he was really hot, and I notated
19 that in my report as a direct quote.

20 MS. RICHARDSON: I pass the witness.

21 THE COURT: Thank you.

22 Ms. Roth.

23 CROSS-EXAMINATION

24 BY MS. ROTH:

25 Q. Pursuant to current FBI policy, the entire statement that

1 you took from Mr. Headley is video and audio recorded?

2 A. Yes. That's correct. And I believe that was provided as a
3 part of discovery.

4 MS. RICHARDSON: It will be.

5 MS. ROTH: Okay. Yeah. There had been no
6 discovery --

7 THE WITNESS: I'm not the case agent. I just believe
8 that that took place.

9 MS. ROTH: Okay. Well, there has been nothing
10 tendered so far.

11 BY MS. ROTH:

12 Q. Where did you interview Mr. Headley?

13 A. At the FBI office in San Antonio.

14 Q. On the first floor?

15 A. In the FBI office in San Antonio.

16 Q. On the first floor?

17 A. In the FBI office.

18 MS. ROTH: Your Honor, I am allowed to ask what the
19 circumstances of the questioning were.

20 THE COURT: Do you remember what floor?

21 THE WITNESS: It was a processing room within the FBI
22 office.

23 THE COURT: Okay.

24 THE WITNESS: I would rather not give the format or
25 layout of the FBI office.

1 THE COURT: Is there a reason you need to know the
2 format or layout of the FBI office?

3 MS. ROTH: There are -- we have been told that there
4 are some rooms on the first floor where there is recording.

5 THE COURT: Oh, okay.

6 MS. ROTH: So I'm --

7 THE WITNESS: I just -- I just testified that it was
8 recorded by audio and video.

9 BY MS. ROTH:

10 Q. And there was no statement that Mr. Headley ever made to
11 any FBI agent that was not recorded by audio or video, correct?

12 A. That's not true. He made statements when he was being
13 transported, as was previously stated.

14 Q. Oh, yes. And you had mentioned that was to a Task Force
15 Officer --

16 A. And that was not recorded by audio --

17 Q. -- not an FBI agent?

18 A. The Task Force Officer is assigned to the FBI, and he
19 represents the FBI, particularly out on this arrest. But
20 anything he does with the FBI is on behalf of the FBI.

21 Q. Any statement other than to Mr. Dave Lozano, the task force
22 officer, that was not recorded?

23 A. Maybe the better way to answer that question is, what I can
24 tell you was recorded by audio and video was the custodial
25 interview of your client, Mr. Headley.

1 Q. What other statements were made by him that weren't
2 recorded?

3 MS. RICHARDSON: Your Honor, I object. He's not going
4 to know if there were statements made to other individuals that
5 weren't recorded.

6 THE COURT: So the middle ground between these two
7 questions is, do you know of any other statement other than
8 those made to the task force officer and ones that were made in
9 the report of custodial interview that Mr. Headley made?

10 THE WITNESS: Sure. Mr. Headley made a comment to me
11 when I asked him his identity out in -- on the front porch of
12 his residence, just prior to being arrested. So that was not
13 recorded by audio and video.

14 BY MS. ROTH:

15 Q. Did he tell you who he was?

16 A. I asked him who he was, and he responded: James Headley.

17 Q. Anything else?

18 A. So that was not audio or video.

19 And I think there was some general conversation that he
20 had. Actually, I do believe that was recorded on audio and
21 video, where he talked about his high school and collegiate
22 sports, sporting events. I think he also may have mentioned
23 that -- I believe it was in the 302 from Officer Lozano, that
24 he made those similar type of comments in the -- in the
25 vehicle.

1 Q. Okay. So the conversations in the vehicle were also
2 recorded by audio and video?

3 A. Ms. Roth, I said the only recording that took place before
4 audio and video was the custodial interview of Mr. Headley.

5 Q. Okay. Well, then you said that there was also recorded
6 audio and video about high school events that were --

7 A. No. I said that he made --

8 Q. -- and he talked about that in the car?

9 A. No. I said he made comments -- I'm sorry. For --

10 THE COURT: He was answering my question. My question
11 was, what statements does he know of that Mr. Headley made
12 other than the ones made in his custodial interview in the FBI
13 office or in the -- or in the car? You're answering all the
14 statements you're aware of.

15 THE WITNESS: I think the question was the same. And
16 I think Ms. Roth had asked me what other statements were made
17 that were outside of an audio and video?

18 THE COURT: Okay.

19 THE WITNESS: And I think I was just answering to
20 that.

21 MS. ROTH: Okay.

22 THE WITNESS: So the statements about sporting events
23 were also made in the vehicle, on the transport.

24 BY MS. ROTH:

25 Q. And that's what I had understood. So I think maybe what

1 you mean is that he had talked about those on the recording in
2 the part of the custodial interview, but you think that also
3 those were discussed in the -- in the vehicle, which was not
4 recorded. Is that correct?

5 A. Yes. That's correct.

6 Q. Okay. Now I understand.

7 Anything else? Any other statements?

8 A. Nothing specific that I can recall.

9 Q. Mr. Dave Lozano transported him. And anybody else doing
10 the transporting?

11 A. There was one other officer. And I believe that was an
12 SAPD officer as well. While I was -- there were two transports
13 that took place, one from the site of the arrest, and a second
14 transport from the FBI office here in San Antonio to the
15 correctional facility or the jail.

16 Q. Okay. And did both of those officers handle both transport
17 legs?

18 A. I believe that Officer Lozano participated in both. And I
19 think on the second transport was Special Agent Clark, here in
20 the courtroom. And I believe accompanying Officer Lozano from
21 the site of the arrest to the FBI office was Officer Cruz -- or
22 not -- Cruz, and I can't remember his last name. He's with
23 SAPD as well, I believe.

24 MS. ROTH: Okay. Your Honor, at this point, based on
25 the testimony, I would move under Rule 26.2 for Dave Lozano's

1 report. This witness said that he read it in preparation for
2 the testimony today, and then testified about what it -- what
3 was contained in there.

4 THE COURT: Do you have a copy of the report,
5 Ms. Richardson?

6 MS. RICHARDSON: Yes, ma'am. The government's
7 tendering an FBI 302. It's four pages, but the last -- Page 3
8 of 4 and 4 of 4 are blank, authored by Task Force Officer David
9 A. Lozano, with regards to the transport.

10 THE COURT: Ms. Roth, do you need a brief recess for
11 you to review it?

12 MS. ROTH: Maybe two minutes, Your Honor. I mean, I
13 think I can review it quickly. That would --

14 THE COURT: I'm happy -- would it just be [inaudible]
15 to take two minutes to do it, and we'll just break?

16 MS. ROTH: Thank you.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you, Your Honor.

19 (Recess at at 10:56 a.m. until 11:00 a.m.)

20 THE COURT: You may be seated.

21 [Inaudible] Ms. Roth.

22 MS. ROTH: Thank you, Your Honor, very much.

23 THE COURT: Sure.

24 BY MS. ROTH:

25 Q. Agent, do you need to review this -- a copy of this report

1 from Mr. Lozano?

2 A. I don't believe so.

3 Q. Okay. I just was going to ask you a few questions about it
4 since you already read it and reviewed it.

5 A. Sure.

6 Q. Mr. Headley was not advised of his rights pursuant to
7 Miranda prior to what he said in the vehicle, correct?

8 A. So FBI policy is, prior to asking a subject that's under
9 arrest any questions, that's when he is advised of his rights.
10 And that was done just prior to that custodial interview.

11 Q. At the FBI, correct?

12 A. At the FBI office, correct.

13 Q. Yes.

14 And, again, I'm going now off of Officer Lozano's report.

15 A. Yes.

16 Q. So I'm just asking -- the Court has not seen this report.
17 So I'm asking you questions on it since you've testified about
18 it.

19 A. Sure.

20 Q. And according to that report, Mr. Headley was not advised
21 of his rights prior to being transported?

22 A. He was advised that he -- all questions would be asked at
23 the FBI; and that once arriving at the FBI, that his rights
24 would be read to him --

25 Q. Okay.

1 A. -- I believe is -- the report says. And he was not asked
2 any questions during transport.

3 Q. And that's why no rights were given, I presume -- would be
4 in accordance with FBI policy?

5 A. FBI policy is once the custodial interview starts, that's
6 when the advice of rights is given.

7 Q. Mr. Headley spoke about, you testified, his athletic
8 accomplishments but, also, his service in the military and the
9 service in the military of other family members, correct?

10 A. He did.

11 Q. And also the fact that he had been working at the
12 Convention Center right up until a stroke disabled him from
13 working?

14 A. Yes, he did.

15 Q. And then he also thanked Special Agent Clark, who's in the
16 courtroom today, and Officer Lozano for being professional and
17 polite during the time they transported him from the FBI to the
18 correctional facility, correct?

19 A. Yes.

20 MS. ROTH: Your Honor, may I just have one moment to
21 look at my notes? I don't think I have further questions, but
22 I just want to make sure.

23 (Pause)

24 BY MS. ROTH:

25 Q. The custodial warnings that you testified about on direct

1 examination, those were in writing or orally?

2 A. Both orally and in writing. We read it to Mr. Headley.
3 Mr. Headley initialed by every right that was read to him,
4 indicating that he understood that right, and then he signed
5 it. And then both myself and another special agent also
6 witnessed and signed it.

7 MS. ROTH: No further questions.

8 THE COURT: Thank you.

9 Anything else, Ms. Richardson?

10 MS. RICHARDSON: Nothing further, Your Honor.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Any more witnesses?

14 MS. RICHARDSON: No, Your Honor. The government,
15 recognizing that the Court has the information from the earlier
16 testimony on the 19th as well as the pretrial services report
17 and the information held therein, coupled with the testimony
18 and the exhibits from today, and the information from the
19 psychological evaluation -- and with all of that taken into
20 consideration, the government rests on detention.

21 THE COURT: Okay. Ms. Roth, do you have any
22 additional witnesses related to detention?

23 MS. ROTH: No, Your Honor. I presume that this will
24 be part -- the psychological report will be part of the record
25 of this, placed under seal perhaps?

1 THE COURT: Yes. I mean, it needs to be placed under
2 seal. But it can be -- it will be part of the record.

3 MS. ROTH: Thank you, Your Honor.

4 THE COURT: So I will take government's -- you can
5 have the floor first for arguments on detention.

6 MS. RICHARDSON: Your Honor, with regards to
7 detention, the government stands by their motion to detain this
8 defendant, not necessarily under risk of flight, but under the
9 ability to protect the community, both the specific victims in
10 this case as well as the community at-large.

11 The information that has been gleaned and put before the
12 Court involves multiple layers that show the dangerousness of
13 this defendant not only to Senator Ted Cruz but potentially
14 John McCain, as well as other public officials that he has
15 indicated he's been enraged with and reached out to. I believe
16 he indicated to Special Agent McLoy that he also called Bernie
17 Sanders' office as well.

18 I know there's been discussion about some of his outbursts
19 being related to the stroke that was in 2014. But clearly, the
20 2008 and the 2000 incident that were reported by his wife were
21 before the stroke. Additionally, the information that's
22 contained within the psychological evaluation shows the
23 defendant's propensity to handling anything that upsets him or
24 causes him any kind of anxiousness or disgruntledness. He
25 handles it with violence.

1 He indicated, on his own, during his psychological
2 evaluation, that he had physical altercations with peers when
3 he was a teenager. And he could actually pinpoint that that
4 was because he felt like that they antagonized him. And he
5 says: I engaged in physical -- or he engaged in physical
6 fights wherein he never lost, and was subsequently accepted
7 into the community. In his mind violence is the answer. And
8 that has started from a very early age and has been ongoing.

9 He indicated that he was aggressive when involved in
10 collegiate-level football, although that would dissipate after
11 he left the field. So, there again, when confronted in a
12 situation where he feels -- where that instance of fight or
13 flight steps in, he fights. And if anything comes up that he's
14 unhappy about, that's how he handles it.

15 It's also not unimportant that the defendant's wife is an
16 enabler to the degree that she was not forthcoming with regards
17 to the incidents in 2000 and 2008. He actually pointed out
18 during the psychological evaluation that his anger directed
19 towards Senator Ted Cruz caused him to feel threatened and
20 deceived, and that he not only made the phonecall and made
21 those threatening statements -- when given an opportunity to
22 say, I did not mean it, instead, he offered examples of, if he
23 ever had the opportunity or if something -- if he was
24 confronted, he would make sure that he did physical harm to Ted
25 Cruz in such a way that Ted Cruz would remember him the next

1 time he saw him.

2 The safety of our officials is at stake, but the safety of
3 everybody surrounding those officials is also at stake. But in
4 addition to their physical safety, their ability to freely move
5 about the country, including the state of Texas, where they
6 serve, is also at stake, their ability to be at -- to know that
7 they are being protected.

8 And for those reasons the government would reassert their
9 motion to detain the defendant without bond.

10 THE COURT: Ms. Roth.

11 MS. ROTH: Thank you, Your Honor. I would like to
12 start with Mr. Headley's -- the comments that Ms. Richardson
13 made regarding Mr. Headley's wife's testimony. And you have
14 read the testimony here.

15 THE COURT: And I was also here when she testified.

16 MS. ROTH: Yes, Your Honor.

17 And I'm very pleased that Ms. Richardson did not say that
18 Ms. Headley was being untruthful. I don't believe that that's
19 what we have reflected here. And we don't know enough right
20 now about his relationship to know whether Ms. Richardson is
21 correct in characterizing the situation as an enabling one.

22 But I do just want to give you context, Your Honor.
23 Mrs. Headley testified after hearing the agent's testimony, and
24 being very bothered by the idea that there was an allegation
25 that her husband had threatened with firearms, because she

1 didn't believe that was accurate.

2 And so I think you need to have that in mind, and also in
3 mind that there was no preparation for that testimony
4 whatsoever. The comments that she made, for instance, "You did
5 not call the Universal police?" "No, ma'am." Well, she
6 didn't. She didn't make any call. She -- according to the
7 police reports, they were walk-in. That sounds very technical,
8 and maybe that is. But I just would like Your Honor to
9 consider that in context.

10 THE COURT: That one, I agree. There's plausible
11 deniability. But then: And you deny that Universal City
12 police was told in 2008 that he had a rifle, correct? And that
13 he, Mr. Headley, took the rifle and sat holding the rifle in
14 your living room, correct?

15 So those are in direct contradiction of what's in the
16 police report.

17 MS. ROTH: Yes, Your Honor.

18 THE COURT: I do have -- you know, as you can imagine,
19 that testimony today, the evidence presented today gives me
20 great pause in relying on the representations of Ms. Headley
21 and, you know, especially since she is the one being put forth
22 as a potential third-party custodian. And I point blank asked
23 whether she would have comfort in being the person who would
24 have to report any violation or deviation from court orders,
25 instructions that would be her obligation to this Court -- you

1 know, that -- my faith and ability to trust that is being
2 comprised as well. And so I'm being candid with you, if you
3 want to address that, but --

4 MS. ROTH: I understand that, Your Honor. And I
5 understand that. I do believe that there are -- I do not
6 believe that the record as it stands shows Mrs. Headley to be
7 an untruthful person. And I think that's important.

8 Ms. Richardson has characterized it as an enabler part of a
9 relationship so -- and I don't --

10 THE COURT: It is not my [inaudible] to sit in
11 judgment of Ms. Headley, and I don't have any desire to do so.
12 It's just to take evidence I have in front of me and address
13 the issues under the Bail Reform Act in terms of whether there
14 are conditions that can mitigate the safety concerns that I
15 have. And I'll just say that the evidence today has affected
16 that analysis.

17 MS. ROTH: Yes, Your Honor. And I understand that. I
18 do think it's notable -- there are a couple of things that are
19 notable. One is that -- consistency is that Mrs. Headley both
20 in the reports, that were apparently contemporaneously made in
21 2008 and the other year, said that there was no physical
22 violence whatsoever and that there was nothing like having a
23 gun pointed at her, being beaten by a gun, any contact with a
24 gun, no gun -- no gun violence and no physical violence. And
25 that's clear from the record. So I think those consistencies

1 are important. And I think we're all in agreement that
2 there's -- that risk of flight is not an issue here. So the
3 question is dangerousness and whether there are conditions
4 there.

5 At this juncture what I am requesting is that Mr. Headley
6 be released on bond to either a halfway house or a VA inpatient
7 program where he can receive the type of counseling that the
8 psychologist recommends. And I think it's very important that
9 the psychologist's tests are consistent with him not being a
10 physical danger. She specifically states that. He doesn't
11 present being a physical danger to himself or to other people
12 or does not present any danger of property damage.

13 So I -- you know, her summary is clear that he does not
14 present this type of danger about which we have no evidence but
15 which the government is alluding to. So I think that's -- that
16 is very important.

17 The other thing that's important is that she says he
18 needs -- he needs individual counseling. He needs mood
19 regulation, and he needs anger management. And these problems
20 stem from a physical impairment. Now, his wife testified at
21 the other hearing that she believes he also suffers from
22 posttraumatic stress syndrome. And that may very well be, and
23 that would predate the stroke.

24 But whether there existed anything prior to the stroke or
25 not, it's clear from this record that these problems either

1 stem from or worsened because of the 2014 stroke, and that
2 that's not the end of the story; that there is something that
3 can be done about that, and that that something to be done is
4 for Mr. Headley to undergo counseling, strict counseling. He
5 can't get that in custody. And we're asking that he be allowed
6 to live or required to live either in a halfway house or in a
7 VA inpatient program so that he can receive that counseling.

8 THE COURT: Thank you.

9 Anything else?

10 MS. RICHARDSON: Yes, Your Honor. One of the things
11 that -- I want to be very clear about the government's position
12 with regards to Ms. Headley's testimony. The reason I did not
13 comment on it is because she's not the defendant in this case.
14 The reason I did not call her to testify is because she would
15 have had to be appointed a lawyer.

16 So I characterized it as being an enabler. But one of the
17 characteristics of enablers in the domestic violence cycle is
18 that they are untruthful and that they cover up for the
19 behavior of the abuser.

20 It also has a direct impact, as the Court has noted, on
21 their ability to be the one to call up when the abuser is not
22 abiding by terms and conditions of anything, whether it's
23 probation, pretrial release, supervised --

24 THE COURT: [Inaudible] now requesting that he be
25 released to Ms. Headley's custody, and she's instead requesting

1 either release to a halfway house or to VA services.

2 MS. RICHARDSON: And then we place the supervisors and
3 the caretakers at both of those facilities at the same risk.
4 Once they cross James Headley on his response, it is not
5 flight, but fight. And we put them at risk. And for that
6 reason he has -- as he pointed out himself, throughout his
7 life, when confronted with situations that caused him to feel
8 dishonored, mistreated, deceived, angered, he has responded
9 both verbally, but he has also responded violently.

10 This is not an instance of where someone has only been
11 verbal, which is also a crime. This is an instance where the
12 person who has been verbal has also followed through on those
13 verbal attacks.

14 MS. ROTH: On that point Ms. Richardson and I
15 profoundly disagree with respect to what the record shows. And
16 I think it is important to note that even according to the
17 statements in the evaluation here, that violence is not
18 something Mr. Headley has resorted to; that the -- that
19 post-stroke his responses have been different than pre-stroke.
20 Pre-stroke he says he was aggressive towards his opponents in
21 collegiate-level football. And I don't know how you can play
22 football without that.

23 THE COURT: Yes. I'm discounting the football
24 evidence. I think that she's talking more about the statement
25 that he made that he pistol-whipped somebody, and other -- and

1 also -- so that one involves an actual use of violence as
2 opposed to just a threat of it.

3 MS. ROTH: Yeah. And it's interesting that that is
4 not in this report where he freely spoke with and was
5 questioned at length for at least -- at least four hours on one
6 day and at least four hours on the other day by the
7 psychologist. So he does dispute the pistol-whipping. The
8 agent -- I viewed the report. The agent testified to what that
9 report said. So I understand that.

10 Then the other thing that's in here is physical
11 altercations with peers while living in south Texas as a
12 teenager. And the way they're described by him here, it's
13 defensive. It's self-defense which, unfortunately, is
14 sometimes part of a high school experience. In any respect,
15 there's nothing else in here regarding violence. And the
16 doctor who evaluated him with tests and her analysis says that
17 she does not believe he's a risk for violence. So, therefore,
18 I don't believe that any caretaker would be at risk of
19 violence.

20 I do have a copy of Mr. Headley's DE-214. I'm happy to
21 tender that under seal as part of this record, too. But I
22 don't think there's any dispute about the fact that he was
23 honorably discharged from the armed services and had -- there
24 was no incidence of violence during the entire time he was in
25 the U.S. military.

1 So I don't believe -- Ms. Richardson and I disagree on any
2 threat of violence. And I stand by what the doctor says, which
3 is that he doesn't pose one.

4 MS. RICHARDSON: Actually, not to keep beating this
5 dead horse, but the doctor says "high propensity," that he does
6 not pose a "high propensity."

7 THE COURT: And I will just go on record as having
8 read the doctor's report and note that the doctor did not
9 have -- she mentioned the incident from the Universal City
10 walk-in report, the one incident. She was not aware of the
11 other report. It does not appear that she interviewed
12 Ms. Headley or got her account or questioned her about any
13 other incidents related to that.

14 So as far as the position she was in, it was much more
15 similar to my position during the first hearing when all we had
16 was a secondhand statement about a potential police report, not
17 the report itself, not any more information about it and not
18 evidence of a second report.

19 So I don't think that the doctor was acting with all of the
20 information that is now in front of the Court, is part of what
21 I am going to conclude.

22 Does anyone else have anything else to say?

23 MS. RICHARDSON: Nothing further from the government.

24 MS. ROTH: No, Your Honor.

25 THE COURT: Okay. I am ready to rule then on the

1 issue of detention.

2 This is a very difficult case because, as we know from the
3 current situation that exists -- and various situations have
4 been covered in the news and everything lately, knowing when
5 somebody is just angry and threatening to do very dangerous
6 things and knowing when they are going to be triggered to take
7 that next step and actually do it -- prognosticating about that
8 is a pretty tough thing to do.

9 But my task today is very limited. I am tasked under the
10 Bail Reform Act with deciding whether or not there are
11 conditions I can fashion that ensure you won't be a risk of
12 flight or that ensure you won't be a risk of danger to the
13 community. You are not a risk of flight. I'm not concerned
14 about that at all.

15 The dangerousness to the community, this was a very close
16 call. Coming into this hearing today, I had some reassurance
17 from -- what I'm not as concerned about is that I couldn't
18 impose conditions that would keep our public officials safe. I
19 could put you under house arrest. I can take all the guns out
20 of your house. We could have pretrial monitor you. We could
21 do all of those things. And I feel confident we could monitor
22 your phone usage and we could make sure you're not threatening
23 anyone. Those are all conditions I could do.

24 But my concern, and partially why I requested the
25 evaluation and a continuation of this hearing, was to make sure

1 that there wasn't going to be a danger posed to other members
2 in the community. And based on the volatility and the evidence
3 that's been presented today, I'm not convinced that your wife
4 will be safe; that you won't act in a way that might endanger
5 yourself; that you won't act in a way that might endanger
6 pretrial services officers or other people who have to come
7 into contact with you in the course of your supervision.

8 I do not think there are conditions I can impose that would
9 ensure that safety. And, therefore, for that reason I am going
10 to order your continued detention.

11 You are remanded to the custody of the marshals. I will
12 follow with a written order that confirms this and any other
13 reason for detention. We're in recess.

14 * * *

15 (Hearing adjourned at 11:24 a.m.)
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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: 10/18/2017 /s/ Chris Poage
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